

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Richmond Division

IN RE:)	
)	
MCDONALD SUTTON)	Case No. 20-34504-KLP
JENNIFER GILBERT SUTTON)	Chapter 13
)	
Debtors)	

MCDONALD SUTTON, ET AL.)	
)	
Movants,)	
)	
v.)	
)	
ALLY FINANCIAL, INC.)	
c/o C T CORPORATION SYSTEM, R/A)	
4701 Cox Rd., Suite 285)	
Glen Allen, VA, 23060-6808)	
)	
Respondent.)	

**MOTION FOR TURNOVER OF PROPERTY OF THE ESTATE
AND FOR RESPONDENT TO SHOW CAUSE WHY IT SHOULD NOT
BE HELD IN CONTEMPT FOR VIOLATION OF THE AUTOMATIC STAY**

COME NOW, the Debtors, by counsel, and as and for their Motion to Turnover Property of the Estate and for Respondent to Show Cause Why it Should Not be Held in Contempt for Violation of the Automatic Stay, state as follows:

1. On or about October 28, 2020 the Debtors' 2017 Ford Expedition ("Vehicle") was repossessed by Respondent, Ally Financial, Inc. ("Ally Financial").
2. On or about November 10, 2020, the Debtors filed for relief under Chapter 13 of the U.S. Bankruptcy Code wherein the Respondent, Ally Financial, is scheduled as a creditor secured by a lien on a the Vehicle.

3. On November 10, 2020 Ally Financial was notified of said Chapter 13 filing and demand was made for return of the Vehicle.

4. Since that date numerous demands have been made on Ally Financial for return of the Vehicle and said Respondent has failed and refused to surrender the vehicle to the Debtors, for which reason resort to this process is necessitated.

5. The Debtors' Chapter 13 Plan will propose to pay the full amount of the lien on the Vehicle, with interest.

6. Possession of this Vehicle is necessary to effective reorganization by the Debtors and the Respondent's continued possession of the Vehicle has the effect of thwarting an otherwise effective reorganization and is in violation 11 U.S.C. §§ 362 and 542, and in violation of the ruling in Tidewater Finance Company v. Moffett, 288 BR 721 (E.D. Va. 2002).

7. The aforesaid actions of Ally Financial is a clear and blatant violation of 11 U.S.C. § 362.

8. The foregoing actions of Ally Financial were done knowingly and intentionally.

9. As a direct and proximate result of the foregoing actions of Ally Financial, the Debtors and their family have had suffered great inconvenience and has been forced to incur costs and attorney's fees.

MEMORANDUM IN SUPPORT OF MOTION

There is no dispute that Ally Financial's failure to return the Vehicle is a violation of the automatic stay, specifically, 11 U.S.C. § 362(a)(3) and (6). The Debtors are seeking damages against Ally Financial pursuant to 11 U.S.C. § 362(h) which provides:

An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

The foregoing facts warrant not only compensatory, but punitive damages as well. Ally Financial is fully aware of the bankruptcy laws. There is no question that many of its customers have filed for relief with this and other courts around the state. The record clearly indicates that Ally Financial was fully aware of the Debtors' filing as evidenced by the inclusion of Ally Financial in the Debtors' mailing matrix and schedules. Notwithstanding its knowledge of the Chapter 13 filing, Ally Financial has and continues to wrongfully deny the Debtors possession of the Vehicle.

WHEREFORE, the Debtors, respectfully request that the Court enter an order:

- a. Finding Ally Financial, Inc. guilty of civil contempt.
- b. Ordering Ally Financial to immediately return the Vehicle to the Debtors.
- c. Awarding the Debtors compensatory damages plus the Debtors' costs and attorney's fees in accordance with 11 U.S.C. § 362(h).
- d. Awarding the Debtors punitive damages in accordance with 11 U.S.C. § 362(h).
- e. Awarding such other relief as the Court may seem just and appropriate.

Dated: November 20, 2020

Respectfully Submitted,

MCDONALD SUTTON
JENNIFER GILBERT SUTTON

By: /s/ James E. Kane
James E. Kane (VSB #30081)
KANE & PAPA, P.C.
1313 East Cary Street
Richmond, Virginia 23219
Telephone: (804) 225-9500
Facsimile: (804) 225-9598
Email: jkane@kaneandpapa.com
Counsel for Debtors

CERTIFICATE OF SERVICE

I certify that on November 20, 2020, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtors, Chapter 13 trustee, the United States trustee, by first class mail to the parties on the attached matrix, and to:

ALLY FINANCIAL, INC.
c/o C T CORPORATION SYSTEM, R/A
4701 Cox Rd., Suite 285
Glen Allen, VA, 23060-6808

And by Fax to:

ALLY FINANCIAL, INC.
Attn: Bankruptcy Department
651-367-2005

/s/ James E. Kane
Counsel for Debtors

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4701 Cox Rd., Suite 285)	
Glen Allen, VA, 23060-6808)	
)	
Respondent.)	

NOTICE OF MOTION AND HEARING

The above Debtors have filed a Motion to Turnover Property of the Estate and for Respondent to Show Cause Why it Should Not be Held in Contempt for Violation of the Automatic Stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then you or your attorney must:

- File with the court, at the address shown below, a written request for a hearing [or written response pursuant to Local Bankruptcy Rule 9013-1(H)]. If you mail your request for a hearing (or response) to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above, to:

Clerk of Court
United States Bankruptcy Court
701 East Broad Street
Richmond, VA 23219

You must also mail a copy to:

James E. Kane, Esquire
Kane & Papa, P.C.
1313 East Cary Street
Richmond, Virginia 23219

- Attend a hearing scheduled for **December 2, 2020 at 10:00 a.m. in Honorable Keith L. Phillips' Courtroom, U.S. Bankruptcy Court, 701 E. Broad Street, Room 5100, Richmond, VA 23219.** If no timely response has been filed opposing the relief requested, the court may grant the relief without holding a hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

MCDONALD SUTTON
JENNIFER GILBERT SUTTON

By: /s/ James E. Kane
James E. Kane (VSB #30081)
KANE & PAPA, P.C.
1313 East Cary Street
Richmond, Virginia 23219
Telephone: (804) 225-9500
Facsimile: (804) 225-9598
Email: jkane@kaneandpapa.com
Counsel for Debtors

CERTIFICATE OF SERVICE

I certify that on November 20, 2020, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtors, Chapter 13 trustee, the United States trustee, by first class mail to the parties on the attached matrix, and to:

ALLY FINANCIAL, INC.
c/o C T CORPORATION SYSTEM, R/A
4701 Cox Rd., Suite 285
Glen Allen, VA, 23060-6808

And by Fax to:

ALLY FINANCIAL, INC.
Attn: Bankruptcy Department
651-367-2005

/s/ James E. Kane
Counsel for Debtors

Label Matrix for local noticing

0422-3

Case 20-34504-KLP

Eastern District of Virginia

Richmond

Fri Nov 20 13:32:32 EST 2020

United States Bankruptcy Court

701 East Broad Street

Richmond, VA 23219-1888

Capital One Auto Finance, a division of Capi

4515 N Santa Fe Ave. Dept. APS

Oklahoma City, OK 73118-7901

UST smg Richmond

Office of the U. S. Trustee

701 East Broad St., Suite 4304

Richmond, VA 23219-1849

AR Resources Inc.

PO Box 1056

Blue Bell, PA 19422-0287

AR Resources, Inc.

Attn: Bankruptcy

Po Box 1056

Blue Bell, PA 19422-0287

Ally Financial

Attn: Bankruptcy

Po Box 380901

Bloomington, MN 55438-0901

Bank of America

Attn: Bankruptcy

4909 Savarese Circle

Tampa, FL 33634-2413

Bk Mckenny

20718 First Street

Mc Kenney, VA 23872-2703

CJW Medical Center

PO Box 740760

Cincinnati, OH 45274-0760

CJW Medical Center

PO Box 99400

Louisville, KY 40269-0400

Capital One Auto Finance

Attn: Bankruptcy

Po Box 30285

Salt Lake City, UT 84130-0285

Capital One Auto Finance, a division of

AIS Portfolio Services, LP

4515 N Santa Fe Ave. Dept. APS

Oklahoma City, OK 73118-7901

(p)JPMORGAN CHASE BANK N A

BANKRUPTCY MAIL INTAKE TEAM

700 KANSAS LANE FLOOR 01

MONROE LA 71203-4774

Chesterfield County Treasurer

9901 Lori Road

P.O. Box 70

Chesterfield, VA 23832-0906

Chippenham Hospital

c/o NCO Financial Systems

P.O. Box 15993

Wilmington, DE 19850-0000

Citi/Sears

Citibank/Centralized Bankruptcy

Po Box 790034

St Louis, MO 63179-0034

Citibank

Citicorp Credit Svcs/Centralized Bk dept

Po Box 790034

St Louis, MO 63179-0034

Citibank/Best Buy

Citicorp Credit Svcs/Centralized Bk dept

Po Box 790034

St Louis, MO 63179-0034

Cjw Medical Center

Resurgent Capital Services

PO Box 1927

Greenville, SC 29602-1927

Comenity Bank/Victoria Secret

Attn: Bankruptcy

Pob 182125

Columbus, OH 43218-2125

Commonweath Pediatrics

c/o CAB

8002 Discovery Dr, Ste 311

Henrico, VA 23229-8601

First Premier Bank

Attn: Bankruptcy

Po Box 5524

Sioux Falls, SD 57117-5524

(p)FOCUS RECEIVABLES MANAGEMENT LLC

1130 NORTHCHASE PARKWAY STE 150

MARIETTA GA 30067-6429

Henrico Doctor's Hospital

PO Box 740760

Cincinnati, OH 45274-0760

Henrico Doctors Hospital

1602 Skipwith Rd

Henrico, VA 23229-5298

Henrico Federa;l Credit Union

Attn: Bankruptcy

9401 West Broad St

Henrico, VA 23294-5331

Internal Revenue Service

Centralized Insolvency Operati

P. O. Box 7346

Philadelphia, PA 19101-7346

James River Emergency Group

P.O. Box 660827

Dallas, TX 75266-0827

Kohls/Capital One

Attn: Credit Administrator

Po Box 3043

Milwaukee, WI 53201-3043

Midland Credit Management, Inc.

PO Box 2037

Warren, MI 48090-2037

Parrish and Lebar, L.L.P.

5 East Franklin Street

Richmond, VA 23219-2105

Rebecca Phillips

12956 Grove Hill Rd

Midlothian, VA 23114-5559

Receivable Management
7206 Hull Street Rd Ste
Richmond, VA 23235-5826

St Francis Medical Center
P O Box 404893
Atlanta, GA 30384-4893

Stony Point Surgrey
8700 Stony Point Parkway
Suite 100
Richmond, VA 23235-1968

Synchrony Bank/ Old Navy
Attn: Bankruptcy
Po Box 965060
Orlando, FL 32896-5060

TACS
P O Box 31800
Henrico, VA 23294-1800

Touchstone Bank
20718 First Street
Mc Kenney, VA 23872-2703

United Consumers Inc
Attn: Bankruptcy Dept
Po Box 4466
Woodbridge, VA 22194-4466

(p)VIRGINIA DEPARTMENT OF TAXATION
P O BOX 2156
RICHMOND VA 23218-2156

Valley Credit Service, Inc
Attn: Bankruptcy
Po Box 2162
Hagerstown, MD 21742-2162

Vervent/yamaha Motor F
Po Box 504125
San Diego, CA 92150-4125

Virginia Credit Union
Attn: Bankruptcy
Po Box 90010
Richmond, VA 23225-9010

Carl M. Bates
341 Dial 866-813-0912 Code: 8576180
P. O. Box 1819
Richmond, VA 23218-1819

James E. Kane
Kane & Papa, PC
1313 East Cary Street
P.O. Box 508
Richmond, VA 23218-0508

Jennifer Gilbert Sutton
11841 Winterpock Road
Chesterfield, VA 23838-1656

John P. Fitzgerald, III
Office of the US Trustee - Region 4 -R
701 E. Broad Street, Ste. 4304
Richmond, VA 23219-1849

McDonald Sutton
11841 Winterpock Road
Chesterfield, VA 23838-1656

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Chase Card Services
Attn: Bankruptcy
Po Box 15298
Wilmington, DE 19850-0000

Focus Receivables Management
1130 North Chase Pkwy Ste 150
Marietta, GA 30067-0000

VA Dept. of Taxation
Office of Customer Services
PO Box 1115
Richmond, VA 23218-0000

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

